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Federal Communications Commission
Office of Secretary

January 26, 1998

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Secretary Magalie R. Salas
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

**RE: Comments on Notice of Proposed Rulemaking,
MM Docket No. 97-234, Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses;
GC Docket No. 92-52, Reexamination of the Policy Statement on Comparative Broadcast Hearings;
GEN Docket No. 90-264, Proposals to Reform the Commission's Comparative Hearing Process to Expedite the Resolution of Cases**

Dear Madam Secretary:

This letter sets forth the views of the NAACP Legal Defense and Educational Fund, Inc. regarding the Federal Communication Commission's (FCC) request for comments on standards that can be implemented to increase minority ownership of broadcast licenses.

The Legal Defense Fund recognizes that this request for comments reflects the FCC's longstanding commitment to encouraging minority participation in the broadcast industry. We commend the FCC's efforts to implement minority ownership policies to promote broadcast diversity, which benefits all audiences. We agree with its concern about the underrepresentation of minorities as owners of broadcast stations. We support the use of narrowly tailored measures to meet the compelling governmental interest of remedying the effects of discrimination in the broadcast industry, in accordance with Adarand.

In determining which tools should be utilized to further the FCC's goals of increasing minority participation, the FCC should consider all possible mechanisms for maximizing opportunity, including but not limited to bidding credits, tax certificates or other enhancements. While the Legal Defense Fund defers to the FCC regarding the specific number and nature of the tools to be used, we encourage the FCC to consider the specific barriers which minorities face in entering the broadcast industry. These barriers include inadequate access to capital and credit, lack of broadcast experience and reduced

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The "Committee of 100," a voluntary cooperative group of individuals headed by Bishop Paul Moore, Jr. has sponsored the appeal of the NAACP Legal Defense and Educational Fund, Inc. since 1943 to enable the Fund to put into operation a program designed to make desegregation a reality throughout the United States.

As of March 1996

information regarding license availability. The FCC should select enhancements that will most effectively alleviate the obstacles faced by minority businesses. In that regard, the FCC should evaluate alternative enhancements according to their demonstrated prior success in promoting opportunities for minorities and their future ability to accomplish their intended purpose. In compliance with Adarand, the FCC should ensure that each tool adopted for this purpose is implemented as narrowly as possible while still furthering the goal of assisting minority businesses to overcome the disadvantages caused by prior inequities in the broadcast industry.

The FCC should decline to limit its application of the tools designed to increase minority ownership to those minority owned businesses that are also small businesses. Given that most applicants for new broadcast stations are small businesses, it is likely that most minority applicants will also be small businesses. However, those minority applicants who do not meet the definition of a small business should not be foreclosed from participation in the FCC's program.[1] As the FCC acknowledges, there is a critical underrepresentation of minorities in broadcast ownership. For example, in 1978, minorities owned less than one percent of the radio and television stations in the United States. Metro Broadcasting, Inc. v. Federal Communications Comm., 497 U.S. 547, 553 (1990). The number has increased only slightly over the past twenty years. Id. Within the past two years, the number has actually decreased from 3.05 percent in 1995 to 2.81 percent in 1996-97. FCC Comments at 36-37, citing NTIA Annual Report, "Minority Commercial Broadcast Ownership in the United States" (August 1997).

The exclusion of larger, minority owned businesses from the FCC's minority participation program prevents such companies from growing even stronger and essentially penalizes them for their prior growth and success. Moreover, such companies likely face increasing competition and additional obstacles to entering the broadcasting industry when compared with large majority owned and operated companies. As a result, larger minority owned businesses would similarly benefit from narrowly tailored enhancements to allow them to participate in the licensing application process. Finally, participation by such businesses in the FCC's program will have the effect of diversifying the types of participating minority businesses, strengthening the FCC's program generally.

The FCC has requested comments on the eligibility criteria to be applied in furtherance of its goal of greater minority participation. We support the use of standards which require applicants to be minority controlled as defined in the Notice of Proposed Rulemaking. Only when a business is minority owned and controlled can the FCC ensure that these important measures are actually benefitting the persons for whom they are intended. We encourage the use of specific requirements for proving minority control in order to ensure uniform application of the definition and to provide prospective applicants

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[1]The regulations contemplate establishing provisions for increasing the participation of small businesses which are entirely separate from those designed to promote opportunities for minority businesses. Minority companies which do not qualify as small businesses will be denied the opportunity to participate in either program.

with valuable information on eligibility factors. We endorse a definition of equity which ensures that the FCC's policies are reserved for companies in which minorities have significant financial interests as well as control. The requirement that minorities must be entitled to receive at least 50.1 percent of the distribution of dividends paid on voting stock and to receive dividends, profits, and other distributions in proportion to equity interests seems to be an appropriate measure for ensuring that sufficient equity is established.

With regard to the FCC's questions on attribution of options, rights or interests, we decline to comment specifically. However, we do suggest that any proposal adopted by the FCC provide opportunities for participation only where minority owners have meaningful control over the company. At the same time, we encourage the FCC to recognize some flexibility in company structure to allow participants to maximize their corporate strength.

The FCC also seeks comments on its proposed definition of minority-owned businesses eligible for its "minority policies." Generally, we support the application of these policies to businesses in which minorities have a substantial financial stake. However, we recognize there may be instances in which minorities may own a substantial stake in and control a company but are not the predominant financial beneficiaries of the company. In the interests of expanding participation of minorities in the broadcast industry, the FCC should consider limited participation for such businesses. In these instances, we urge the adoption of measures to ensure that such companies are controlled by minorities and that the financial interests held by minorities are at least considerable.

With regard to the advisability of specific provisions for women-owned business, we urge the FCC to resist approaching this issue according to a zero sum analysis, which presumes that the award of credits or other special tools to one disadvantaged group is to the detriment of other eligible groups. This type of analysis is inherently divisive because it places groups of beneficiaries of the FCC's policies in competition with one another. This is counterproductive and ignores the general principle behind the FCC's program -- to expand opportunities for broadcast company owners whose disadvantages have precluded them from competing on an equal basis for licensing applications and other broadcast services. We urge the FCC, instead, to maximize broadcast opportunities for all eligible companies and to increase participation by all firms and disadvantaged groups in the licensing process itself.

Thank you for the opportunity to comment on the proposed rulemaking. If we can be of further assistance, please do not hesitate to contact us.

Sincerely yours,

Elaine R. Jones

Elaine R. Jones
Director-Counsel